

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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ROBERT ALFANO,

Plaintiff,

- against -

NATIONAL GEOGRAPHIC
CHANNEL, et al.,

Defendants.

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ORDER

CV 06-3511 (NG) (JO)

JAMES ORENSTEIN, Magistrate Judge:

I deny the plaintiff's motion to extend discovery for the purpose of conducting certain depositions and inspecting the NG defendants' computer server, both of which the plaintiff also asks me to compel. The predicate assumption for the requested relief is that the NG defendants had a duty to place a "litigation hold" on potentially discoverable information as early as June of 2005. The plaintiff contends that the defendants had such a duty to preserve information because of the contents of a letter dated June 8, 2005 (the "Grandelli letter"), in which the plaintiff's counsel complained about the use of his client's image and demanded certain remedial actions on pain of litigation.

The plaintiff correctly notes that a party who reasonably anticipates litigation must take certain steps to preserve discoverable information. But the plaintiff has not established that the defendants did have such a reasonable expectation of litigation under the circumstances of this case. The defendants' counsel promptly responded to the Grandelli letter by investigating the matter, removing the plaintiff's photograph from prospective advertisements, apologizing to the plaintiff, and providing a retraction. The plaintiff did not respond to the letter or in any way convey to the defendants that he believed their response to be insufficient and subject to a

continued threat of litigation. Accordingly, it would not be reasonable for the defendants to have anticipated litigation, and they therefore had no duty to depart from their normal record retention policies so as to preserve information for future proceedings.

For the reasons set forth above, I deny plaintiff plaintiff Robert Alfano's motion to compel certain discovery and to extend the deadline for completing discovery.¹

SO ORDERED.

Dated: Brooklyn, New York
August 16, 2007

/s/ James Orenstein
JAMES ORENSTEIN
U.S. Magistrate Judge

¹ The plaintiff has also asked me to compel the production of certain emails that the NG defendants withheld as privileged. Having reviewed the emails *in camera* I am satisfied that the NG defendants' invocation of attorney-client privilege is appropriate and therefore deny that aspect of the motion to compel as well.